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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81-289)

Customhouse Broker License—Cancellation

Cancellation Without Prejudice of Customhouse Broker License 2333

Notice is hereby given that the Commissioner of Customs, on November 2, 1981, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.51(a) Customs Regulations, as amended, upon the specific request of Geraldine Schmitt, Detroit, Michigan (d.b.a. Gerry Schmitt & Co.) cancelled without prejudice individual customhouse broker's license No. 2333 issued to her April 18, 1955, for Customs District No. 38. The Commissioner's decision is effective as of November 2, 1981.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

[Published in the Federal Register Nov. 30, 1981 (46 FR 58242)]

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19 CFR Part 134

(T.D. 81-290)

Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations, relating to the scope of country of origin marking requirements, by including a cross reference to a section in another part of the Customs Regulations which describes procedures for falsely marked importations.

EFFECTIVE DATE: December 28, 1981.

FOR FURTHER INFORMATION CONTACT: Benjamin Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 134.0, Customs Regulations (19 CFR 134.0), outlines the scope of country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Tariff Schedules of the United States (19 U.S.C. 1202). Section 134.0 also indicates that the provisions regarding false or misleading markings as to the country of origin are set forth under Part 134, as well as the consequences and procedures to be followed if imported articles are not legally marked.

Although Part 134 does contain the provisions and procedures governing imported articles not legally marked (19 CFR 134.51), the provisions and procedures concerning false markings are not found in Part 134, section 134.0 notwithstanding. The procedures involving falsely marked articles are set forth in section 11.13, Customs Regulations (19 CFR 11.13), which prohibits importation of articles which bear, or the containers of which bear, false designations of origin or false descriptions or representations. Such falsely designated or falsely described articles are subject to detention by Customs.

To prevent readers from being misled, this document revises section 134.0 to indicate that the provisions relating to falsely marked importations are found in section 11.13.

NOTICE AND PUBLIC PROCEDURE UNNECESSARY

Because this minor amendment is informational in nature and essentially procedural, pursuant to 5 U.S.C. 553(b)(B), notice and public participation thereon are unnecessary.

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis has been prepared.

In addition, it has been determined that the amendment is not subject to the provisions of Pub. L. 96–354, the Regulatory Flexibility Act (5 U.S.C. 601–612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

DRAFTING INFORMATION

The principal author of this document was Robert J. Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENT TO THE REGULATIONS

Section 134.0 Customs Regulations (19 CFR 134.0), is revised to read as follows:

134.0 Scope.

This part sets forth regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Tariff Schedules of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in section 11.13 of this chapter. Special marking and labeling requirements are covered elsewhere.

(R.S. 251, as amended, secs. 304, 624, 46 stat. 687, as amended, 759, 77A Stat. 14, 80 Stat. 379, 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1304, 1624))

WILLIAM T. ARCHEY,
Deputy Commissioner of Customs.

Approved: November 9, 1981.

JOHN M. WALKER, JR.,
Assistant Secretary of The Treasury.

[Published in the Federal Register Nov. 30, 1981 (46 FR 58070)]

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19 CFR Part 141

(T.D. 81-291)

Entry of Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to special invoice requirements for certain articles of steel to identify 32 designated articles of steel by American Iron and Steel Institute ("AISI") category numbers.

EFFECTIVE DATE: December, 28, 1981.

FOR FURTHER INFORMATION CONTACT: Irene Barrack, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202 566–8235).

SUPPLEMENTARY INFORMATION:

BACKGROUND

When section 141.89, Customs Regulations (19 CFR 141.89), was amended on February 13, 1978, by T.D. 78–53 (43 FR 6065), to require that a special invoice be presented to Customs for each shipment of certain articles of steel having an aggregate purchase price over $2500, the articles were listed in the document both by the AISI category number and by letter designation. Section 141.89(b)(2) lists the 32 articles of steel only by letter designations (A–FF). It is a common practice in the steel industry, both in the United States and abroad, to identify these articles of steel by AISI category numbers (1–32) and not by letter designations. All printed materials referencing these items identify them by the AISI category numbers.

In order to eliminate a possible source of confusion to readers, Customs is redesignating the articles of steel listed in the present section 141.89(b)(2) by AISI category numbers under a new subparagraph "i."

NOTICE AND PUBLIC PROCEDURE UNNECESSARY

Because this minor amendment is informational in nature and essentially procedural, pursuant to 5 U.S.C. 553(b)(B), notice and public participation thereon are unnecessary.

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis has been prepared.

In addition, it has been determined that the amendment is not subject to the provisions of Pub. L. 96–354, the Regulatory Flexibility Act (5 U.S.C. 601–612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

DRAFTING INFORMATION

The principal author of this document was Robert J. Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENT TO THE REGULATIONS

Section 141.89(b)(2), Customs Regulations (19 CFR 141.89(b)(2)), is amended by revising it to read as follows:

141.89 Additional information for certain classes of merchandise.

* * * * * * *

(b) * * *

(2) The following articles of steel are subject to the special invoice requirements of section 141.89(b)(1):

(i) Category Number and Products:

(1) Ingots, blooms, billets, slabs, etc.
(2) Wire rods.
(3) Structural shapes, plain 3 inches and over.
(4) Sheet piling.
(5) Plates.
(6) Rail and track accessories.
(7) Wheels and axles.
(8) Concrete reinforcing bars.
(9) Bar shapes under 3 inches.
(10) Bars, hot rolled, carbon.
(11) Bars, hot rolled, alloy.
(12) Bars, cold finished.
(13) Hollow drill steel.
(14) Welded Pipe and tubing.
(15) Other Pipe and tubing.
(16) Round and shaped wire.
(17) Flat wire.
(18) Bale ties.
(19) Galvanized wire fencing.
(20) Wire nails.
(21) Barbed wire.
(22) Black plate.
(23) Tin plate.
(24) Terne plate.
(25) Sheets, hot rolled.
(26) Sheets, cold rolled.
(27) Sheets, coated including galvanized.
(28) Sheets, coated, alloy.
(29) Strip, hot rolled.
(30) Strip, cold rolled.
(31) Strip, hot and cold rolled-alloy.
(32) Sheets other, electric coated.

(R.S. 251, as amended, sec. 407, 42 Stat. 18; secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759, 77A Stat. 14, Tariff Schedules of the United States (General Headnote 11) (19 U.S.C. 66, 173, 1202, 1481, 1484, 1624)).

WILLIAM T. ARCHEY,
Deputy Commissioner of Customs.

Approved: November 9, 1981.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register Nov. 30, 1981 (46 FR 58070)]

(19 CFR PART 10)

(T.D. 81-292)

ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

AMENDMENT TO THE CUSTOMS REGULATIONS REGARDING THE IMPORTATION OF CRUDE PETROLEUM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the duty-free entry of crude petroleum, including reconstituted crude petroleum and crude shale oil, imported from Canada subject to a commercial exchange agreement between U.S. and Canadian refiners. The amendment is being made pursuant to legislation already enacted by the Congress which is intended to assure a continued supply of Canadian crude petroleum at the lowest cost to U.S. refiners located in the northern United States, near the Canadian border.

EFFECTIVE DATE: November 30, 1981.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5307).

SUPPLEMENTARY INFORMATION:

BACKGROUND

At present, petroleum refiners located in the northern United States near the Canadian border rely heavily upon crude petroleum imported from Canada for use in their operations. Due to a lack of pipelines and other factors, Canada is the most economical source of sufficient quantities of crude petroleum for these refiners. The Canadian Government has imposed export quotas on crude petroleum, severely curtailing these exports to the United States. Nevertheless, that Government has continued to supply crude petroleum to refiners in the United States in excess of export quotas in exchange for an equivalent quantity of domestic crude petroleum from the United States.

Because allowing Canadian crude petroleum to be entered without the payment of any Customs duty would remove one economic barrier to such exchanges, and to assure a continued supply of Canadian crude petroleum at the lowest cost to U.S. refiners, by an Act of November 8, 1977 (Pub. L 95-159, Sec. 2, 91 Stat. 1269);

Congress amended the headnotes to Schedule 4, Part 10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). As amended, the TSUS provides that crude petroleum, including reconstituted crude petroleum and Canadian crude shale oil, imported from Canada subject to: (1) a commercial exchange agreement between U.S. and Canadian refiners; and, (2) certain other specified criteria, may be entered free of duty.

Part 10, Customs Regulations, is being amended to ensure that these exchanges will continue.

In accordance with Pub. L. 95–159, this amendment was prepared after consultation with the Secretaries of Commerce and Energy.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

Because the amendment merely conforms the Customs Regulations to changes made to the tariff schedules by Pub. L. 95–159, which already are in effect, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are found to be unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), the Secretary of the Treasury has determined that the amendment set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

It is presumed that in considering Pub. L. 95–159, the Congress determined that the benefits accruing from the legislation would outweigh any burdens on the affected parties. Because any effects that were contemplated, either expressly or necessarily by the underlying legal authority are considered to flow from that authority and not from the regulation, the regulation is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities through comments, either formal or informal.

EXECUTIVE ORDER 12291

Because this will not result in a "major" rule as defined by section

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1(b) of Executive Order 12291, the regulatory analysis and review prescribed by section 3 of the Executive Order is not required.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulation Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Departments of Commerce and Energy participated in its development.

AMENDMENT TO THE REGULATIONS

Part 10, Customs Regulations (19 CFR Part 10), is amended by adding a new section 10.179 to read as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

CANADIAN CRUDE PETROLEUM

10.179 Canadian crude petroleum subject to a commercial exchange agreement between United States and Canadian refiners.

(a) Crude petroleum (as defined in Schedule 4, Part 10, Headnote 4(a), Tariff Schedules of the United States (19 U.S.C. 1202)) produced in Canada may be admitted free of duty if the entry is accompanied by a certificate from the importer establishing that:

(1) The petroleum is imported pursuant to a commercial exchange agreement between United States and Canadian refiners which has been approved by the Secretary of Energy;

(2) The petroleum is imported pursuant to an import license issued by the Secretary of Energy;

(3) An equivalent amount of domestic or duty-paid foreign crude petroleum on which the importer has executed a written waiver of drawback, has been exported to Canada pursuant to the export license and previously has not been used to effect the duty-free entry of like Canadian products; and,

(4) An export license has been issued by the Secretary of Commerce for the petroleum which has been exported to Canada.

(b) The provisions of this section may be applied to:

(1) Liquidated or reliquidated entries if the required certification is filed with the district director at the port where the original entry was made on or before the 180th day after the date of entry; and

(2) Articles entered, or withdrawn from warehouse, for consumption, pursuant to a commercial exchange agreement.

(c) Verification of the quantities of crude petroleum exported to or imported from Canada under such a commercial exchange agreement shall be made in accordance with import verifica-

tion provided in Part 151, Subpart C, Customs Regulations (19 CFR Part 151, Subpart C).

(R.S. 251, as amended; sec. 624, 46 Stat. 759, 77A Stat. 14, Sec. 2, 91 Stat. 1269 (5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11) 1624)).

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: October 26, 1981.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register Nov. 30, 1981 (46 FR 58069)]

U.S. Customs Service

Proposed Rulemaking

(19 CFR Part 101)

Proposed Change in the Field Organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to amend the Customs Regulations to change the field organization of the Customs Service by extending and redefining the geographical boundaries of the Puget Sound Washington, Customs port of entry. The proposed geographical limits of the consolidated port of entry would encompass all of the area within the present port of entry limits of Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and Tacoma, Washington. The proposed change is part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATES: Comments must be received on or before (60 days from date of publication in the Federal Register).

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229 (202 566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The limits of the consolidated Customs port of entry of Puget Sound were extended in 1979 by T.D. 79-169 (44 FR 34478). How-

ever, since that time, there have been numerous requests for Customs services by businesses which have established outside of the current port limits. To keep pace with the expanding needs of Customs-related activities in the Puget Sound port of entry and to provide better service to importers, carriers, and the public, Customs proposes to further extend the port limits. Under the proposal, the geographical boundaries of the port would be extended to include the limits of the Port of Seattle, which includes the Seattle corporate limits, plus an extension by section, township, and range.

The proposed amendment would eliminate specific reference to the Ports of "Kenmore Air Harbor" (District 30, Port 18 in Annex A to the Tariff Schedules of the United States (TSUS)), and "Renton Municipal Airport and Seaplane Base" as set forth in T.D. 79–169.

The geographical limits of the proposed consolidated port of entry would encompass all of the area within the present port of entry limits of Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and Tacoma, Washington.

As extended, the geographical boundaries of Puget Sound, Washington, port of entry would be redefined as follows:

> The ports of Seattle (section 35, Township 27 North, Range 3 East, West Meridian; sections 1, 2, 11 through 14, inclusive, 24, 25, 26, 34, 35, and 36, Township 26 North, Range 3 East, West Meridian; Township 26 North, Range 4 East, West Meridian; Township 26 North, Range 5 East, West Meridian; sections 1, 2, 3, 9 through 16, inclusive, 21 through 27, inclusive, and 36, Township 25 North, Range 3 East, West Meridian; Township 25 North, Range 4 East, West Meridian; Township 25 North, Range 5 East, West Meridian; sections 2, 9 through 16, inclusive, 22 through 27, inclusive, 34, 35, and 36, Township 24 North, Range 3 East, West Meridian; Township 24 North, Range 4 East, West Meridian; Township 24 North, Range 5 East, West Meridian; sections 1, 2, 11, 12, 13, 24, 25, 26, and 36, Township 23 North, Range 3 East, West Meridian; Township 23 North, Range 4 East, West Meridian; Township 23 North, Range 5 East, West Meridian; sections 1 through 17, inclusive, Township 22 North, Range 4 East, West Meridian; and sections 1 through 18, inclusive, Township 22 North, Range 5 East, West Meridian), Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend; and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue

Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street, East, then proceeding in an easterly direction along 224th Street, East, to its intersection with Meridian Street, South, then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

AMENDMENTS TO THE REGULATIONS

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), would be amended accordingly.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

This proposed amendment does not meet the criteria for a "major" regulation as defined by section 1(b) of E.O. 12291. Accordingly, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), the Secretary of the Treasury has determined that, if promulgated, the regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, this regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this proposal may have a limited effect upon some small entities in the Puget Sound area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

AUTHORITY

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (46 FR 9336).

DRAFTING INFORMATION

The principal author of this document was Barbara E. Whiting, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: October 26, 1981.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register Nov. 30, 1981 (46 FR 58093)]

19 CFR Part 19

Proposed Customs Regulations Amendments Relating To Use of Container Stations After Transportation In-Bond

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend various sections of the Customs Regulations relating to container stations, to provide that bonded carriers may transport containerized cargo in-bond to container stations at ports of destination. Presently, the regulations may be interpreted so as to restrict the use of container stations for imported merchandise brought into a port by an importing carrier only to facilities within the port of arrival after complying with appropriate procedures. Although a bonded carrier may transport containerized cargo to its own facility at a port of destination, this interpretation precludes the delivery of the in-bond merchandise to a container station at the port of destination.

DATE: Comments must be received on or before (60 days from the date of publication in the Federal Register).

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Entry aspects: Benjamin H. Mahoney, Entry Procedures and Penalties Division (202–566–5765); Bond aspects: William D. Lawlor, Carriers, Drawback and Bonds Division (202–566–5856); Operations aspects: Thomas J. Hargrove, Cargo Processing Division (202–566–5354); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington; D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A container station is a secured area within the United States into which containers of merchandise may be moved for the purpose of opening the containers and delivering the contents before any entry is filed with Customs or duty is paid. A container station is important because it serves as a central location at a port for processing containerized merchandise which otherwise could not be handled timely at the dock, wharf, pier, or bonded carrier's terminal.

Sections 19.40 through 19.49, Customs Regulations (19 CFR

19.40–19.49), provide the procedures for the establishment and use of container stations. The pertinent regulations presently provide that a container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director, upon the filing of an application and posting of a bond by a prospective container station operator, and approval of the application by the district director of Customs. Containerized cargo may be moved from the place of unlading to a designated container station before the filing of an entry for the merchandise. The container station operator may file an application for the transfer of a container intact to the station. Approval of the application by the district director shall serve as a permit to transfer the container and its contents to the station. The importing carrier remains jointly and severally liable with the container station operator for the proper delivery of the merchandise until it is "permitted" in accordance with subpart A of Part 158, Customs Regulations (19 CFR Part 158). The regulations also provide that except when the container station operator is moving the merchandise to his own station by his own vehicle, the merchandise may be transferred to a container station only by a bonded cartman (see 19 CFR 112.1 (b)); or bonded carrier.

A problem has arisen because Part 19 may be interpreted so as to restrict the use of container stations for imported merchandise brought into a port by an importing carrier only to facilities within the port of arrival after complying with appropriate procedures. Although a bonded carrier may transport containerized cargo to its own facility at a port of destination, this interpretation precludes the placement of the in-bond merchandise in a container station at the port of destination.

Customs realizes that the same conditions which existed at a port of arrival before the establishment and use of container stations there also exist when containerized cargo is transported in-bond to a port of destination from the port of arrival in the United States. The bonded carrier's terminal at the port of destination may be unable to process containerized cargo timely and may be unable to provide adequate facilities to permit Customs examination of the imported merchandise, thereby causing a great inconvenience and expense in storage charges to the importer. Alternatives to processing containerized cargo at the carrier's terminal include moving the entire container to a general order warehouse (see 19 CFR 127.1), public stores, or the importer's premises for examination.

Therefore, the same rationale for the use of a container station for containerized cargo arriving directly at a port of arrival applies to the delivery of containerized cargo transported in-bond to a container

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station at a port of destination. The container station would serve as a centralized location for processing in-bond merchandise at the port of destination. Bonded carriers would by permitted to transport merchandise directly to these stations rather than holding the containers at their own facilities.

In addition to benefiting the importing community, Customs would benefit from the proposed regulatory change. The workload would be concentrated at centralized facilities which are already staffed by Customs officers. Furthermore, container stations, unlike common carrier terminals, are required to meet Customs physical cargo security standards.

Accordingly, this document proposes to amend sections 19.40, 19.41, 19.43, and 19.44, Customs Regulations (19 CFR 19.40, 19.41, 19.43, 19.44), to permit containerized cargo transported in-bond to be delivered to a container station at a port of destination.

PROPOSED CHANGES

1. It is proposed to amend section 19.40 to provide that a container station, independent of either a bonded carrier or importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director upon complying with the necessary requirements. It is also proposed to amend the format of the Containerized Cargo Bond (Term) set forth in section 19.40 to permit a container station operator to receive containerized cargo at specified locations from a bonded carrier after transportation in-bond.

2. It is proposed to amend section 19.41 to provide that containerized cargo also may be received directly at the container station from a bonded carrier after transportation in-bond before the filing of an entry of merchandise therefor or the permitting thereof, as provided in subpart A of Part 158. The phrase "filing of an entry" in present section 19.41 means the filing of one of the types of entry of merchandise such as consumption, warehouse, or temporary importation under bond entry. This phrase is not intended to mean transportation entries. Therefore, to avoid any confusion, it is proposed to add the phrase "of merchandise" after the word "entry" in section 19.41.

3. It is proposed to amend section 19.43 to provide that, in addition to the locations presently specified, an application (i.e., permit to transfer) also may be filed at the bonded carrier's facility for merchandise transported in-bond.

4. It is proposed to amend section 19.44 to clarify the responsibilities of the importing carrier and container station operator, and provide for the new responsibilities of the bonded carriers.

CONTAINERIZED CARGO BONDS (TERM)

It is anticipated that the final rule would become effective 60 days after the date of its publication in the Federal Register. Containerized Cargo Bonds (Term) already on file with Customs need not be terminated by the effective date of the final rule unless the principal desires to take advantage of the Customs Regulations, as amended. In that event, a new Containerized Cargo Bond (Term) in the amended format would be executed and submitted to the district director for approval before the effective date of the final rule. The existing bond would be terminated.

Containerized Cargo Bonds (Term) which are executed and submitted after the effective date of the final rule would be in the amended format.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sec. 448, 46 Stat. 714, as amended (19 U.S.C. 1448), sec. 450, 46 Stat. 715, as amended (19 U.S.C. 1450), sec. 484, 46 Stat. 722, as amended (19 U.S.C. 1484), sec. 499, 46 Stat. 728, as amended (19 U.S.C. 1499), sec. 551, 46 Stat. 742, as amended (19 U.S.C. 1551), sec. 552, 46 Stat. 742 (19 U.S.C. 1552), sec. 565, 46 Stat. 747, as amended (19 U.S.C. 1565), sec. 623, 46 Stat. 759, as amended (19 U.S.C. 1623), sec. 624, 46 Stat. 759 (19 U.S.C. 1624).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

E.O. 12291

The proposed amendments do not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared for this regulatory project.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), the Secretary

of the Treasury has determined that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603and 604.

However, the public is invited to submit comments on the extent of the impact of the proposed amendments on small entities.

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend Part 19, Customs Regulations (19 CFR Part 19), in the following manner:

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. It is proposed to revise the introductory paragraph of section 19.40, Customs Regulations (19 CFR 19.40), the first "Whereas" clause of the Preamble to, and Condition 5 of, the Containerized Cargo Bond (Term) which follow section 19.40 to read as follows:

CONTAINER STATIONS

19.40 Establishment of container stations.

A container station, independent of either the importing carrier or bonded carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director upon the filing of an application therefor and its approval by the district director and the posting, in the sum of $25,000 or such larger amount as the district director shall determine, of a bond in the following format:

Port of———————————————————

No.———————————————————

UNITED STATES CUSTOMS SERVICE CONTAINERIZED CARGO BOND (TERM)

* * * * * * *

Whereas, the above-bounden principal has requested, or will request, permission to remove imported containers, truck trailers, lift vans or vehicles (hereinafter referred to as containers) containing merchandise or baggage (hereinafter referred to as merchandise)from the place of unlading from an importing vessel, vehicle or aircraft of the ———,

for transportation to the ——— terminal(s) at ———, or to receive such containers at said location from a bonded carrier after transportation in-bond, for a period beginning on the ——— day of ———, 19 ——, and ending on the ——— day of ———, 19 ——, both days inclusive; and

* * * * * * *

(5) And if pursuant to proper permit by the district director of Customs the above-bounden principal shall remove imported containers from the place of unlading from importing vessels, vehicles, or aircraft and land, place, or store any merchandise in the containers in the above-mentioned terminal(s) of the principal or on lighters, piers, landing places, or spaces adjoining thereto, or such other places permitted by the district director on special request made by the principal hereon, or shall receive such containers at said location from a bonded carrier after transportation in-bond, and shall retain such merchandise in the containers at such places until a permit for the removal thereof is granted, and, in the event that any such merchandise in the containers shall be removed therefrom before proper permits have been issued, shall pay all duties, taxes, charges, and exactions accruing on any part of the merchandise in the containers so removed; or in the event the merchandise in the containers so removed is free of duty, shall pay as liquidated damages an amount equal to the value of such merchandise contained in the containers, the damages on any one shipment not to exceed $500 (it being understood and agreed that the amount to be collected in either case shall be based upon the quantity and value of such merchandise in the containers as determined by the district director, and that the decision of the district director as to the status of such merchandise, whether free or dutiable, together with the rate and amount of duties, taxes, charges, and exactions also shall be binding on all parties to this obligation, it is further understood and agreed that liability under this instrument attaches for all shortages whether discovered before or after the filing of any form of entry);

* * * * * * *

2. It is proposed to revise section 19.41, Customs Regulations (19 CFR 19.41), to read as follows:

19.41 Movement of containerized cargo to a container station.

Containerized cargo may be moved from the place of unlading to a designated container station, or may be received directly at the container station from a bonded carrier after transportation in-bond, before the filing of an entry of merchandise therefor or the permitting thereof (see subpart A of

Part 158 of this chapter) for the purpose of breaking bulk and redelivery of the cargo.

3. It is proposed to revise section 19.43, Customs Regulations (19 CFR 19.43), to read as follows:

19.43 Filing of application.

The application, listing the containers by marks and numbers, may be filed at the customhouse or with the Customs inspector at the place where the container is unladen, or for merchandise transported in-bond, at the bonded carrier's facility, as designated by the district director.

4. It is proposed to revise section 19.44, Customs Regulations (19 CFR 19.44), to read as follows:

19.44 Carrier responsibility.

(a) If merchandise is transferred directly to a container station from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a container station or is delivered directly to the container station by a bonded carrier, the bonded carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(c) In either case under paragraph (a) or (b), the importing carrier and the bonded carrier, as applicable, shall be responsible for assuring that the provisions of Subpart A, Part 158 of this chapter, relating to quantity determinations, and discrepancy reporting and accountability are followed.

(d) The importing carrier and the bonded carrier, as applicable, shall indicate concurrence in the transfer of the merchandise either by signing the application for transfer or by physically turning the merchandise over to the operator.

(e) The importing carrier and the bonded carrier, as applicable, shall be responsible for ascertaining that the person to whom a container is delivered for transfer to the container station is an authorized representative of the operator.

(f) The importing carrier and the bonded carrier, as applicable, shall furnish an abstract manifest showing the bill of lading number, the marks and numbers of the container, and the usual manifest description for each shipment in the container.

WILLIAM T. ARCHEY,
Deputy Commissioner of Customs.

Approved: October 26, 1981.

JOHN M. WALKER, JR.
Assistant Secretary of Treasury.

[Published in the Federal Register, Nov. 30, 1981 (46 FR 58090)]

United States Court of Customs and Patent Appeals

NOTICE

November 19, 1981.

To: Beatrice Ball, Customs Service

From: Ruth A. Butler, Administrative Services Officer

Subj.: Customs Opinions

The court has decided to discontinue use of C.A.D. numbers beginning with Volume 69. Effective immediately, cases will be identified by the appeal number.

RUTH A. BUTLER,
Administrative Services Officer.

U.S. Court of Customs and Patent Appeals

Appeal No. 81-6

THE UNITED STATES *v.* J. E. MAMIYE & SONS

1. CLASSIFICATION—Tote bags Considered as Handbags Under Item 706.24

Customs Court decision holding certain tote bags to be classifiable as handbags under item 706.24, Tariff Schedules of the United States, affirmed.

2. ID.—Definition of Handbag

Handbag is used in its broadest sense to cover all types of bags carried in the hand or on the arm.

3. ID.

Under item 706.24, handbags was not intended to be interpreted in a way which inherently excludes shopping bags.

4. ID.—Definition of Shopping Bags

Shopping bags, being an exception, must be strictly construed; primary use must be to carry purchased articles from the place of purchase to the place of use.

5. ID.—Use of Tote Bags

Tote bags of the types here in issue, while useful for shopping, are primarily used as a second handbag for the convenience of carrying additional personal articles that would not fit in one handbag.

F. 2d

UNITED STATES, APPELLANT, *v.* J. E. MAMIYE & SONS, INC., APPELLEE

No. 81-6

United States Court of Customs and Patent Appeals, November 19, 1981, Appeal from United States Court of International Trade, C.D. 4878.

[Affirmed]

Thomas S. Martin, Acting Asst. Atty. General, *David M. Cohen*, Director, *Joseph I. Liebman* and *Jerry P. Wiskin*, attorneys for appellant.

Steven P. Florsheim, Robert B. Silverman and *Saul Davis*, attorneys for appellee.

[Oral argument on October 5, 1981 by *Jerry P. Wiskin* for appellant and *Saul Davis* for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

NIES, *Judge*.

[1] This is an appeal from the decision of the U.S. Customs Court,[1] ——Cust. Ct.——, C.D. 4878, 509 F. Supp. 1268 (1980), holding certain "tote bags" to be properly classifiable as "handbags" under item 706.24, Tariff Schedules of the United States (TSUS),[2] and not as textile articles not specially provided for under item 389.60 (now 389.62), TSUS,[3] as claimed here by appellant. We affirm.

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[1] The U.S. Customs Court was renamed the United States Court of International Trade, effective November 1, 1980, by the Customs Courts Act of 1980, Pub. L. 96-417, 94 Stat. 1727 (1980).

[2] Item 706.24, TSUS, provides as follows:

[3] Item 389.60, TSUS, was renumbered item 389.62, TSUS, by Executive Order 11974 of February 25, 1977

SCHEDULE 7—Specified Products; Miscellaneous and Nonenumerated Products

PART 1—Footwear; Headwear and Hat Braids; Gloves; Luggage, Handbags, Billfolds, and Other Flat Goods.

* * * * * * *

SUBPART D.—Luggage; Women's and Children's Handbags; and Billfolds, Card Cases, Coin Purses, and Similar Flat Goods

Subpart D headnotes:

* * * * * * *

2. For the purposes of the tariff schedules—

* * * * * * *

(b) the term "handbags" covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags; and

* * * * * * *

Luggage and handbags, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets; and flat goods:

* * * * * * *

Of textile materials (except yarns, of paper), whether or not ornamented:

* * * * * * *

Other:

Of vegetable fibers and not of pile or tufted construction:

* * * * * * *

706.24 Other.....20% ad val.

Item 389.62, TSUS, provides as follows:

SCHEDULE 3—Textile Fibers and Textile Products

* * * * * * *

PART 7—Miscellaneous Textile Products; Rugs and Scrap Cordage

* * * * * * *

SUBPART B—Textile Articles Not Specially Provided for

* * * * * * *

Articles not specially provided for, of textile materials:

* * * * * * *

Other articles, not ornamented:

* * * * * * *

Of manmade fibers:

* * * * * * *

Other:

* * * * * * *

389.62 Other.....25¢ per lb. + 15% ad val.

Facts

The subject bags consist of various styles of textiles fabric bags, referred to as "totes" or "tote bags," entered under 20 separate entries. During trial, the parties stipulated that Exhibits 1 through 5 were representative of all the entries. The five tote bags are all generally rectangular in shape with an opening at the top extending across the full width of the bag. Each has two cloth handles, one on either side of the opening. Exhibit 1 comes with a detachable small purse with a zipper closure and has an outside pocket. Exhibit 3 has a single snap closure in the middle of the top opening. None of the five exhibits has an inside pocket. Some bags are in plain solid colors; others have simple letter graphics; and one displays a street scene. Some are constructed of a single piece of fabric folded and sewn on one side and the bottom. Others have gussets in the sides and seams finished with edging. One bag has a separate lining.

Upon entry, the bags were classified as articles not specially provided for, of textile materials, under item 389.60, TSUS. Plaintiff-appellee protested, alleging the items to be properly classifiable as handbags under item 706.24, TSUS. The Government answered saying the bags are shopping bags and, therefore, not classifiable as handbags.

At trial, eighteen witnesses were called and fifty-three exhibits were received in evidence. Judge Ford, in his opinion, carefully reviewed the evidence and we will not repeat it here. *See* —— Cust. Ct. at ——, 509 F. Supp. at 1269–74. Based on this evidence Judge Ford found that the bags of the type here in issue are customarily carried by women or girls as an auxiliary or second handbag, properly classifiable under item 706.24, TSUS.

Issue

Are the subject articles "handbags" but not "shopping bags" within the meaning of Schedule 7, Part 1, Subpart D, TSUS?

Requirements for Handbags Under Schedule 7, Part 1, Subpart D

The first question which must be resolved is whether the tote bags in issue are "handbags" within the meaning of that term as used in Schedule 7, Part 1, Subpart D, Headnote 2(b) supra, n.2.[4] If the merchandise is not a type of handbag, no consideration need be given to whether appellee's goods fall within the exception which excludes "shopping bags."

The Government asks that we give the term "handbags" a narrow meaning which would limit "handbags" to those bags which are

[4] The meaning of a tariff term is a matter of law and, accordingly, may be properly raised on appeal. *United States* v. *National Carloading Corp.*, 48 CCPA 70, C.A.D. 767 (1961), and cases cited therein.

constructed so that a woman can securely carry a wallet and other personal items. In the Government's view, tote bags which are carried open or have no secure closure and which are designed to carry bulky items inherently are not "handbags."

Definitions of "handbag" in standard reference works extant at the time the statute was enacted in 1962, as well as more current editions, support a broader definition than that proposed by the Government:

> (1) Webster's Third New International Dictionary of the English Language, Unabridged Edition (1961 ed.), p. 1026:
> handbag: 1: traveling bag; 2: a woman's bag made in various shapes of fabric, leather, or plastic, held in the hand or looped by handles over the shoulder, and used for carrying usu. small personal articles and accessories.
> (2) Collier's Funk & Wagnalls Standard Dictionary of the English Language, International Edition (1962 ed.) p. 572:
> handbag: A small, portable bag, as a small satchel or a woman's purse.
> (3) Random House Dictionary of the English Language, Unabridged Edition, (1973 and 1980 eds.), p. 642:
> handbag: 1. a bag or box of leather, fabric, plastic, or the like, for carrying in the hand or under the arm or by suspending from the arm or shoulder, commonly used by women for carrying money, toilet articles, small purchases, etc. 2. valise.

[2] The subject tote bags are "handbags" within the above definitions and we see no basis for holding that the statute should be interpreted as meaning something else. Indeed, the structure of the statute clearly indicates that Congress used the term in its broadest sense, covering all types of bags carried in the hand or on the arm. This is the most logical interpretation when consideration is given to the exceptions which were created. Since it must be presumed that Congress did not use superfluous language in the statute (*United States* v. *Avdel Corp.*, 64 CCPA 44, C.A.D. 1182, 546 F.2d 901 (1977)), there would be no need to exclude shopping bags and luggage specifically if they were not otherwise included.[5] The only statutory limitation is that the handbags must customarily be carried by women or girls, a limitation which is unquestionably satisfied by the subject tote bags. The articles must, therefore, be classified under item 706.24 unless they are shown to fall under the exclusion for "shopping bags." [6]

---

[5] Since the intent of Congress is ascertainable from the statute, we need not consider the arguments of the parties whether the subject bags are *ejusdem generis* with the named handbag styles. *Sandoz Chemical Works, Inc.* v. *United States*, 50 CCPA 31, C.A.D. 815 (1963).

[6] [2] The Government's further argument that the subject tote bags are not handbags *because* they are shopping bags is also rejected. That these articles may not be classified or subjected to duty under item 706.24, TSUS, because of the exclusion therefrom if they are shopping bags, is a result of the specific exclusion, not because the term "handbags" was intended to be interpreted in a way which inherently excludes them.

Meaning of "Shopping Bags"

The second basis advanced for overturning the judgment below is that, if the subject tote bags are held to be generally within the scope of the term "handbags," they nevertheless fall within the exclusion provided for "shopping bags."

The purpose or intent of Congress in excluding "shopping bags" from Subpart D is nowhere reflected in the legislative history of the TSUS. Nor is the term "shopping bag" to be found in any edition of various recognized lexicographic authorities which have been consulted. Moreover, the parties have cited none.

The parties agree that disposable paper or plastic bags with handles, generally square or rectangular in shape, which are routinely used to package purchased goods at the time of sale are shopping bags. Appellee would have us limit the term to such bags—what might be called packaging type shopping bags. The Government, on the other hand, asserts that "tote bags" were developed in England during World War II to avoid the tax on "handbags" and were called "shopping bags"; that the disposability of paper and plastic shopping bags reflected the tenor of the post-World War II society of the 1950's and early '60's; that the energy and natural resource conscious society of the '70's led to the popularity of fabric bags to be used for the same purpose for which plastic and paper shopping bags had heretofore been used; and that even the packaging type shopping bags are not limited in use to carrying purchases home from the store but are frequently used or re-used to carry personal effects.

The Government concludes that the bags in question, made of textile material, are the "in vogue, durable and reusable shopping bags of today."

[4] Since we have no specific guidelines from Congress and only personal divergent views of witnesses as to the types of bags the term "shopping bags" encompasses, it is appropriate to rely on the usual rule of statutory construction that an exception which carves out something which would otherwise be included must be strictly construed.[7] *Corn Products Co.* v. *Commissioner*, 350 U.S. 46 (1955); *De Haan Co.* v. *United States*, 55 CCPA 76, C.A.D. 936 (1968); *Joleo Impex Co.* v. *United States*, 45 Cust. Ct. 6, C.D. 2189 (1960). Accordingly, we construe the term "shopping bag" to mean a bag primarily used for shopping, that is, for carrying purchased articles from the place of purchase to the place of use.[8] The court below found

[7] If these bags are neither handbags nor luggage, they would then be classified under 389.62, TSUS, a basket provision. Giving a strict construction to shopping bags is in line with one of the purposes of the TSUS, viz., to deemphasize the importance of and restrict the scope of tariff basket provisions. *United States* v. *A. Johnson & Co.*, 66 CCPA 35, C.A.D. 1218, 588 F.2d 297 (1978).

[8] While packaging type shopping bags may also in fact be re-used for a variety of purposes, we do not consider that such use negates that these bags are chiefly used for shopping.

that [5] tote bags of the types here in issue, while useful for shopping, are primarily used as a second handbag for the convenience of carrying additional personal articles that would not fit in one handbag. The record amply supports this conclusion that the chief use is to carry articles already in one's possession, such as books, packed lunches, umbrellas or extra shoes.[9]

Appellant finally argues that regardless of the classification of tote bags generally, the evidence in this case establishes that appellee's tote bags are promoted and used as shopping bags. In particular the Government principally relies upon collective Exhibit 6 which consists of advertisements used by the purchasers of appellee's tote bags, all of whom offered the bags as premiums with the purchase of other items. None indicates that shopping is the sole or even the chief use of the bag. Exhibit 6A shows a photograph of one style of appellee's tote bags containing books offered to new subscribers of a book club. Purchases of these books would obviously be made by mail, not by shopping. Exhibit 6B refers to another of appellee's tote bags as a "canvas carryall." Exhibit 6C identifies yet another as a "multipurpose tote bag." Exhibit 6D, an advertisement used by another book club, states that the bag is:

> Designed for durability plus flair, this roomy tote is ready to go shopping or picnicking, to the office or to the beach.

Appellee's witness testified that these uses are typical for all of the subject tote bags. Appellant's position is not supported by the record.

Conclusion

The judgment of the Court of International Trade that the subject merchandise is properly classifiable under item 706.24, TSUS, is *affirmed*.

Hiranport Company v. *United States Treasury Department* Acting by and Through the United States Customs Service

1. Order of Dismissal for Failure to Dispose of Action by Trial or Otherwise—Abuse of Discretion by Court of International Trade

No abuse of discretion in dismissal for appellant's failure to dispose of action by trial or otherwise in accordance with order of court or in denying motion for reinstatement and extension of time for disposition.

2. Id.—Specious Grounds for Abuse

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[9] Judge Ford was, therefore, correct in not adopting the rationale of *Adolco Trading Co.* v. *United States*, 71 Cust. Ct. 145, C.D. 4487 (1973), to the extent it was based on physical characteristics of a bag rather than chief use.

That Government needed time to answer appellant's interrogatories is specious grounds for appellant's request for extension of date set by court order.

3. Id.

Representations made to the court in previous motions negate sufficiency of other grounds.

F. 2d

HIRANPORT COMPANY, APPELLANT, *v.* UNITED STATES TREASURY DEPARTMENT, ACTING BY AND THROUGH THE UNITED STATES CUSTOMS SERVICE, APPELLEE

No. 81–14

United States Court of Customs and Patent Appeals, November 19, 1981, Appeal from United States Court of International Trade.

[Affirmed]

Robert G. Burt, and *David R. Ludwig*, attorneys for appellant.

J. Paul McGrath, Asst. Attorney General, *David M. Cohen*, Branch Director, and *Sheila N. Ziff*, attorneys for appellee.

[Oral argument on November 2, 1981 by *David R. Ludwig* for appellant and *Shiela N. Ziff* for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

NIES, *Judge*.

[1] This appeal is from an order of the United States Court of International Trade granting the Government's motion to dismiss for appellant's failure to dispose of this action by trial or otherwise by October 15, 1980, and from the refusal of the court to grant appellant's motion to reinstate the case and extend the time for disposition until March 15, 1981 (or October 15, 1981). Appellant charges the trial court with abuse of its discretion. We affirm.

OPINION

Given that this case was filed on July 7, 1978, that on two previous occasions the court had granted appellant additional time after appellant failed to prosecute,[1] and that the order of the court entered August 4, 1980, in reinstating the case, specifically required that appellant at least be ready for trial by October 15, 1980, we hold that there was no abuse of discretion in the court's denial of appellant's motion for an extension of that date, good cause not having been

[1] On appellant's motion, after a 30 day notice of dismissal for failure to prosecute issued on November 8, 1979, discovery was extended until May 1, 1980. Appellant failed to meet that date and did not move for additional time prior thereto. An order of dismissal was entered on June 10, 1980.

shown. [2] Appellant's motion for an extension of time was not made until October 15, 1980, and was based solely on the specious ground that additional time was required for the convenience of the Government to answer interrogatories which appellant had not served until October 14, 1980.

In its motion for rehearing dated December 30, 1980, appellant gave the explanation that appellant's counsel was unable to serve the interrogatories sooner because of the [3] disruption caused by reorganization of the law firm at the time the order was entered. However, in obtaining the August 4, 1980 order appellant's counsel had represented to the court that the interrogatories were ready for service in June and would have been served but for the dismissal that was entered on June 10, 1980. Appellant's further explanation that counsel did not understand the procedure of the court and was misled in some way by a clerk's response to his inquiry made on October 14, 1980, does not explain appellant's failure to have served the interrogatories in ample time to be ready to proceed to trial as required by the court's order. It was well within the discretion of the trial court to find appellant's motion for rehearing inadequate to justify reinstating the case.

Accordingly, the decision of the Court of International Trade is *affirmed*.

Affirmed

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–101)

ALDRICH CHEMICAL COMPANY, INC., PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Court No. 78–6–01082

Before WATSON, Judge.

ALKALOID

Cytochalasin B, a nitrogenous compound derived from a fungus and used in cytological research is found to be properly classifiable

as a natural alkaloid. The Court examines various scientific authorities and resolves a conflict of expert testimony in plaintiff's favor.

[Judgment for plaintiff]

(Decided November 9, 1981)

Foley & Lardner (*Bernard E. Edelstein* and *Jon P. Christiansen* at the trial and on the briefs) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office Commercial Litigation Branch (*Saul Davis* at the trial and on the brief) for the defendant.

WATSON, *Judge:* In this test case the Court is faced with a dispute regarding classification of 13 entries of an organic chemical compound named Cytochalasin B, which were imported imported during the years 1977, 1978 and 1979. The compound was classified under the provision for other nitrogenous compounds of Item 425.52 of the Tariff Schedules of the United States (TSUS) and assessed with duty at the rate of 1.5¢ per lb. plus 7.5 percent ad valorem. The plaintiff claims that the proper classification should be as other natural alkaloids and their compounds not artificially mixed under Item 437.22, dutiable at the rate of 2 percent ad valorem.

There is no dispute that this compound is nitrogenous. However, because alkaloids are one of many groups of nitrogenous compounds, classification as an alkaloid, if proven, would be more specific. Attention must therefore be focused on the question of whether Cytochalasin B is an alkaloid. On this question the parties offered conflicting expert testimony and a plethora of scientific treatises.[1]

The Court found the expert testimony and evidence offered by plaintiff to be the more impressive. This included the testimony of Dr. James Cook, a professor of Chemistry at the University of Wisconsin and a specialist in alkaloidal chemistry, and Dr. Alfred Bader, president of plaintiff and a distinguished chemist with long experience in the sale of chemicals.

From the testimony and evidence, the Court finds that Cytochalasin B is a metabolite of a fungus, that is to say, it is a product of the normal metabolic functioning of a fungus. Its name is a compound of the Greek words for "cell" and "relaxation," a reference to its ability

[1] In connection with an issue discussed at footnote 6, the Court reserved decision on the admission of Defendant's exhibits F and G for identification and now excludes the former and admits the latter. Exhibit F for identification is a copy of an article from a publication entitled "Carolina Tips" and is copyright by the Carolina Biological Supply Company. It does not have the appearance of a standard or authoritative source. Exhibit G shows itself to be from a standard reference work entitled *Dictionary of The Fungi* by G.C. Ainsworth (Commonwealth Mycological Institute, Kew, Surrey 1971) and can be accepted as such. In the use of reference works in the determination of the meaning of tariff terms the Court continues to rely on authoritative publications introduced in evidence, appended to briefs or located in its own researches. See *Schott Optical Glass, Inc.* v. *United States*, 67 CCPA,— C.A.D. 1239, 612 F. 2d 1283, 1285 (1979); *Trans-Atlantic Co.* v. *United States*, 60 CCPA 100, 471 F. 2d 1397 (1973).

to inhibit the normal division of cells. As a consequence, it is used in cytological research, in the study of genetics or biological processes.

To obtain Cytochalasin B the fungus is grown on a medium and then extracted with chloroform. The extract is subjected to silica gel chromatography which, by a process of selective adsorbtion in a column, yields first Cytochalasin A, then A mixed with B. Cytochalasin B is separated off and crystallized. In structure it has several rings, one of which is a heterocyclic ring containing a nitrogen atom bonded to a carbonyl.

Plaintiff's argument was threefold: First, it argued that the best modern authority includes Cytochalasin B among the alkaloids. Second, it argued that even the "classical" definition of alkaloids adopted by the government would properly include Cytochalasin B. Third, it argued that the proliferation of discoveries in the field of alkaloidal chemistry required a new and more accurate definition of the term "alkaloid." It offered such a definition, under which Cytochalasin B would undoubtedly be an alkaloid.

Defendant responded to these arguments by citing what it considered to be contrary authority on the scientific recognition of Cytochalasin B as an alkaloid, by arguing that Cytochalasin B departed from the classical definition in a number of respects, and by offering criticisms of plaintiff's new definition.

On plaintiff's first point it stressed the discussion of Cytochalasin B in the section on miscellaneous alkaloids in *Specialist Periodical Reports, The Alkaloids*, Vol. 6 [Exhibit 23] and the inclusion of other Cytochalasin compounds in Vols. 5 and 7 [Exhibits 21 and 22]. It characterized the *Specialist Periodical Reports*, published by the Chemical Society of London, as the most up-to-date and comprehensive work on the subject of alkaloids, a characterization which was not effectively challenged.

Defendant countered with the inclusion of phomin (another name for Cytochalasin B) in a chapter on non-alkaloidal nitrogen compounds in Nakanishi, *Natural Products Chemistry*, Vol. 2 (1975) [Exhibit A]. Defendant also sought to lessen the authority of the *Specialist Periodical Reports* by arguing that it lists many compounds which assertedly are not alkaloids such as penicillin, and maytansine.

However, when the Court considers that Nakanishi is a general work on natural compounds, only a portion of which is devoted to alkaloids, and further, that Nakanishi refers readers to *Specialist Periodical Reports* for additional information on alkaloids, the primacy of the latter is sufficiently established. Furthermore, the inclusion of compounds such as penicillin in *Specialist Periodical Reports* does not discredit it. While it may be better known as an antibiotic, from a

structural standpoint, penicillin and certain other antibiotics can be properly placed in the family of alkaloids.

The weight of plaintiff's evidence was not diminished by proof that Cytochalasin B was not listed in other publications such as Glasby, *Encyclopedia of the Alkaloids* [2] (Vols. I–III, 1975–1977) and Manske, *The Alkaloids*. First, considering the magnitude of the field, the absence of a listing does not permit the inference that the author had considered the question and second, the authors acknowledge the inevitability of omissions in a work covering a field as large as that of alkaloidal chemistry. In addition, Manske was proven to be somewhat dated.

Finally, on this first point, defendant's proof that the cytochalasins are also referred to in scientific literature as microbial or active metabolites,[3] mold metabolites [4] of fungal metabolites [5] is not inconsistent with proper denomination as an alkaloid. It cannot be expected that writers in a field in which there are acceptable alternative ways to describe a given compound will use a single term and it is certainly understandable that they may wish to use a term which emphasizes the source or function of the compound rather than its membership in a general class of chemical compounds.

In sum then, as regards usage in the scientific community, the Court is satisfied that Cytochalasin B is considered an alkaloid.

On the second point of conformity to the traditional definition of alkaloids the Court agrees with plaintiff. The Court finds that even assuming the correctness of the definition of alkaloids advocated by the defendant, it would not exclude Cytochalasin B.

The traditional definition appears with varying degrees of reservation in a number of texts. A good example is the definition given in G.A. Swan, *An Introduction to the Alkaloids*, (1967) p. 1 [Exhibit 24].

It is not easy to give an exact definition of what is meant by an alkaloid. In a broad sense, alkaloids are nitrogenous bases which occur naturally in plants. They nearly always contain their nitrogen as a part of a heterocyclic system and are often quite complex in structure. A particular alkaloid is usually restricted to certain genera and families of the plant kingdom, rarely being present in large groups of plants. In addition, the alkaloids usually show specific pharmacological activity. However there is no very sharp distinction between alkaloids and many other naturally occurring nitrogenous compounds. For

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[2] Defendant's argument that Professor Glasby must have known of Cytochalasin B (because he worked for the company that discovered it) and therefore must be presumed to have considered and decided against its treatment as an alkaloid is rejected as highly speculative.

[3] Binder and Tamm, *The Cytochalasans* [sic]: *A New Class of Biologically Active Microbial Metabolites* [Exhibit E].

[4] *The Merck Index* (9th Ed.) p. 365.

[5] 83 Chem. Abstracts 23529, No. 23504V.

example, colchicine is regarded as an alkaloid because, although it is not heterocyclic and is scarcely basic (it is, in fact, an amide), it is active pharmacologically and is of restricted botanical distribution. On the other hand, Thiamine, although is it a heterocyclic, nitrogenous base, is not classed as an alkaloid because it is universally distributed in living matter. Biosynthetically, the alkaloids are related to the amino acids.

The defendant's version of the traditional definition requires that a compound be of plant origin, nitrogenous, basic, heterocyclic and of complex structure [Exhibits 20, 24, 25 and A]. In the Court's opinion, plaintiff has proved that Cytochalasin conforms to this definition in all but one respect [6] and in that respect it is in the company of numerous non-basic alkaloids. Before tiring, plaintiff's expert witness was able to find 162 nonbasic compounds treated as alkaloids by Professor Glasby. The Court was additionally persuaded by the fact that Colchicine, which is also used for cytological research, is a recognized alkaloid despite the fact that it is neither basic nor heterocyclic. In the same vein, Professor Glasby recognizes Maytansine, which is derived from a fungus and is not basic.

On the issue of definition the Court found the testimony of plaintiff's witness Dr. Cook to be the more persuasive.

Defendant's expert witness was Dr. Edwin Vedejs, also a professor of chemistry at the University of Wisconsin. At the trial, the Court reserved its decision on declaring Dr. Vedejs to be an expert witness. It did so due to some reservations it had on the extent of his work with alkaloids and on the fact that his familiarity with Cytochalasin B was limited to unsuccessful attempts to synthesize it. Upon reflection, the Court accepts his expertise in this area although it is inclined to give greater weight to the opinion of one whose experience is more completely devoted to the field of alkaloids.

In addition, the impact of Dr. Vedejs' testimony was somewhat lessened by his unfamiliarity with Professor Glasby's reference work on alkaloids, his disagreement with defendant's position that an alkaloid must be heterocyclic and his refusal to recognize such accepted alkaloids as caffeine or theobromine. Furthermore, he sought to distinguish Cytochalasin B from other alkaloids derived from Phenylalanine by stating that all the others lost their carbon dioxide molecule in the process. However this is evidently not true of Cyclopenin and Cyclopenol, both of which retain carbon dioxide during biosynthesis from

[6] Defendant's argument that fungi are not plants is rejected. Although there admittedly is a divergence of views regarding whether fungi are part of the plant kingdom, the more widespread view is that they are plants. On this point the Court is also influenced by the acknowledged acceptance as an alkaloid, of ergotamine, notwithstanding the fact that it is derived from a fungus. Moreover, when it is considered that the ergot alkoloids are among the oldest recognized alkoloids, the making of a distinction in this area between higher and lower plants seems artificial.

Phenylalanine.[7] Finally, and more generally, the Court found inconsistency in his overall acknowledgment of imprecision in the traditional definition of alkaloids and his attempt to foster a strict standard for excluding Cytochalasin B.

In the final analysis, the Court did not try to arrive at a new and more accurate definition of alkaloids, although plaintiff's proposed definition did appear to be more satisfactory.[8] This was not necessary in light of its conclusion that Cytochalasin B is an alkaloid within the traditional definition. Nor is the Court of the opinion that it ought to undertake to define so specialized a term in a manner which has not yet gained acceptance in the field, even though the traditional definition is losing its value. At least it should not do so unless there is no other way to arrive at a decision.

Defendant made a final argument that the importation was not shown to be a natural substance within the meaning of the claimed classification and the definition in Schedule 4, Part 3, Headnote 3(a), which defines natural substances as substances found in nature and which have not had changes made in their molecular structure. However, it is the Court's view that the plaintiff's expert testimony clearly demonstrated that Cytochalasin B was a natural product of the fungus. Furthermore, Dr. Cook testified that Cytochalasin B had not been synthesized.[9] Dr. Vedejs testified that he had not been able to complete a synthesis.

Defendant also stressed the use of a synthetic medium on which to grow the fungus. This has no more bearing on the naturalness of the Cytochalasin B than a synthetic diet for cows would have on the naturalness of their milk. The use of radioactively labelled Phenylalanine by Binder and Tamm in their successful effort to discover how the fungus produced Cytochalasin B does not mean that radiocative Phenylalanine is needed for the normal production. The actual method extracting Cytochalasin B is set out in D. Aldridge, et al., "The Structures of Cytochalasins A and B," Journal Chem. Soc. (c) 1667–76 (1967) attached as Appendix K to plaintiff's reply brief. No radioactive Phenylalanine is used in the extraction and further, the Court is

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[7] See p. 15, Vol. I, *The Alkaloids, Specialist Periodical Reports* (1971) and L. Nover and M. Luckner, *On the Biosynthesis of Cyclopenin and Cyclopenol, Benzoliazepine Alkaloids from Penicillium Cyclopium Westling*, 10 European Journal of Biochemistry 268, 270 (1969) attached respectively as Appendice I and J to Plaintiff's reply brief.

[8] Dr. Cook eliminated the basic and heterocyclic requirements. He focused instead on alkaloids being nitrogenous substances which are secondary metabolites produced in plants. The nitrogen atom may be incorporated into the alkaloid molecule as an amine (weakly basic) an amide (neutral properties), as a non-basic N-Oxide group, or a basic quaternary ammonium salt. Finally, his definition states that many alkaloids demonstrate intense biological or pharmacological activity.

[9] This is the Court's understanding of his testimony as recorded at page 56 of the transcript:

> Q. Do you know if Cytochalasin B has ever been derived by synthesis?
>
> A. It has been. Cytochalasin C was synthesized by Stork. I don't believe it has been . . . I haven't seen the paper in the last year . . . if "B" has been synthesized.

The government seized on the first part of the response, which distorts the true meaning of the answer.

satisfied that whatever Phenylalanine is present in the fungus at intermediate stages is present naturally.

In this case plaintiff proved that Cytochalasin B was an unmodified natural product and the burden thereafter fell on the government to prove otherwise.

For the above reasons, based on its evaluation of the evidence and the expert testimony, the Court finds that Cytochalasin B is a natural alkaloid and should be classified as such.

Judgment will enter accordingly.

(Slip Op. 81–102)

NORMAN G. JENSEN, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 76–4–01016

Before RICHARDSON, *Judge*

Animal Feeds

SCREENINGS—GROUND OR NOT GROUND—WORDS OF EXTENSION—EO NOMINE PROVISION

Grain screenings pellets exported from Canada and classified in liquidation upon entry at Blaine, Washington, under TSUS item 184.75 as animal feeds, not specially provided for, *Held*, properly classifiable as claimed under TSUS item 184.47 as screenings, ground or not ground, where it is conceded that the imported pellets are a form of screenings, and the descriptive term *ground or not ground* must be read as a term of extension and not as a term of limitation in the absence of any indication in the legislative history of the provision of a Congressional intention to limit the forms of screenings imported.

[Judgment for plaintiff.]

(Decided November 12, 1981)

George R. Tuttle, A Professional Corporation (*Stephen S. Spraitzar* at the trail and on the briefs) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Madeline B. Kuflik* at the trial and on the brief); for the defendant.

RICHARDSON, *Judge:* The merchandise in this case, described on invoices as "grain screenings pellets", was exported from Canada between May and September of 1971, and classified in liquidation

upon entry at Blaine, Washington, under TSUS item 184.75 as modified by T.D. 68–9 as animal feeds, not specially provided for, other, at the duty rate of 8 *per centum ad valorem*. Plaintiff claims that the merchandise should be classified under TSUS item 184.47 as modified by T.D. 68–9 as grain screenings, ground or not ground, other, free of duty.

In the pleadings defendant admits that the imported merchandise consists of grain and seed screenings which undergo a pelleting process [amended complaint, paragraph 9]. And, although initially placed in issue, defendant admitted at the conclusion of the trial that the imported pellets are a form of grain and seed screenings [defendant's brief, page 4, footnote 3]. Additionally, plaintiff has expressly admitted that the imported pellets were chiefly used as food for animals on or about the dates of importation [exhibit A]. In view of these admissions the issue presented for disposition by the court is whether the merchandise at bar is more specifically provided for in item 184.47 as *claimed* than in item 184.75 as *classified*.

The evidentiary record indicates that the imported merchandise consists of screenings from a grain elevator in British Columbia, Canada. The screenings, composed of wild oats, dust (chaff), small weed seeds, and small broken grains, undergo a grinding process to degerminate the weed seeds. Because the grinding does not degerminate the smaller weed seeds, the screenings are run through a pellet mill which utilizes pressure and heat to degerminate the weed seeds that were not removed in the grinding process. Thereafter, lignosite, in the amount of 1%, is added to the screenings as a *binder*, and the product is pelletized to facilitate transportation and storage. The merchandise is bought and sold as screenings and is recognized as such by persons in the trade.

Plaintiff contends that item 184.47 is an *eo nomine* provision which provides for all forms of screenings including pelleted screenings. Plaintiff argues that the pelleting process does not cause the imported merchandise to lose its identity as "screenings". Plaintiff also contends that item 184.47 more specifically describes the imported pellets than does item 184.75. Plaintiff calls attention to the fact that item 184.75 contains a "not specially provided for" clause.

Defendant contends that item 184.47 is an *eo nomine* provision which is expressly limited to screenings which are ground or not ground. Defendant argues that pelleted screenings are different from ground or unground screenings since pelleting requires substantial additional processing of the screenings.

In *American Customs Brokerage Co., Inc. a/c Albers Milling Co.* v. *United States*, 76 Cust. Ct. 146, C.D. 4649 (1976), merchandise likewise described as "grain screening pellets" and also exported from

Canada was held properly classified under item 184.75 as animal feeds, and ingredients therefor, not specially provided for, other, as against the importer's claim for classification of the merchandise under item 184.70 as an animal feed byproduct obtained from the milling of grains, mixed feed and mixed-feed ingredients. However, item 184.47 was not involved in the case, and the case turned on the failure of proof necessary to support classification under item 184.70. The case does, however, underscore the fact that as to grain screenings pellets which come from the same source as those at bar, namely, Pacific Elevators in British Columbia, the lignosite ingredient is present only as a *binder*.

There is no question but that the provision for "screenings" is an *eo nomine* provision. *Universal Laboratories* v. *United States*, 35 Cust. Ct. 23, C.D. 1715 (1955). The question as to whether or not the qualifying phrase "ground or not ground" appearing at the end of the articles enumerated in item 184.47 is to be read as a *limitation* as contended for by defendant is a *question of law*.

All that can be learned from the record as to the purpose of *grinding* may by summed up in the direct testimony of Gary DeWar, director of the terminal facilities for Alberta Wheat Pool, Pacific Elevators, and Prince Rupert in the western part of British Columbia. The witness testified (R. 22):

> Q. What was the purpose of grinding the refuse screenings?—A. To blend the commodity plus the initial stage of the degermination of the weed seeds.
>
> Q. Why doesn't the grinding destroy the weed seeds?—A. It doesn't totally destroy them. I don't know why. We found in the Canadian system that we require not only the heat but the pressure to totally degerminate weed seeds.

Thus, according to the witness, *grinding* is used to partially degerminate the weed seeds from the screenings. Presumably then, if another system were to become available to accomplish *en toto* that which *grinding* can only accomplish *pro tanto*, namely total degermination of weed seeds, it is conceivable that *grinding* might well be eliminated as a step in the production of pellets. In other words, *grinding* may or may not take place. And if the descriptive term "ground or not ground" in item 184.47 is read in this light, it would appear to be a term of *extension* rather than one of *limitation*—a description of a process which may or may not take place in the production of screenings pellets.

Legislative history discloses that this language was first introduced into paragraph 731 of the Tariff Act of 1922 which read:

> Screenings, scalpings, chaff, or scourings of wheat, flaxseed, or other grains or seeds: Unground, or ground, 10 per centum ad valorem: *Provided*, That when grains or seeds contain more than 5 per centum of any one foreign matter dutiable at a rate

> higher than that applicable to the grain or seed the entire lot shall be dutiable at such higher rate.

The Tariff Commission reports that when the provision was introduced in H.R. 7456, it was proposed to make the *unground* articles dutiable at the rate of 75 cents per ton, and the *ground* articles dutiable at the rate of $1.50 per ton. [Summary of Tariff Information, 1921, p. 705] The Commission made the following suggestion to the Senate Finance Committee:

> *Suggested changes.*—Was it the intention in fixing the rate on screenings, etc., to make the rate higher on unground than on ground in order to discourage the importation of injurious weed seeds? If so, should not the rates be reversed? [Id., p. 706]

By adopting the language of paragraph 731 as set out above, Congress appears to have eliminated any differentiation between unground and ground screenings, and provided for uniform treatment in the dutiable status of both classes of articles. The same holds true for paragraph 731 of the Tariff Act of 1930 and item 184.47, the successor provisions to paragraph 731 of the 1922 act.

The word "unground" standing by itself would seem to imply a *restriction*, as also would the word "ground" standing by itself. But when both terms are grouped together in the same descriptive phrase, i.e., "ground or not ground", they tend to cancel out each other as having a *restrictive* significance. The same would apply to the terms "full or empty" when written in a tariff provision with reference to the condition of a container such as a drum. *Cf. Thos. Cook & Son-Wagons-Lits, Inc.* v. *United States*, 31 CCPA 32, 35, C.A.D. 245 (1943).

In the light of the meager legislative history of the phrase "ground or not ground" the court is inclined to the view that if Congress had intended the phrase to be one of *limitation*, it would have chosen more forceful words to express that intent such as "not further processed than grinding" in the manner and style with which it chose the wording in paragraph 732 [cereal foods and preparations] of the 1922 act and qualified that language with the phrase "processed further than milling". *Cf. Atkins, Kroll & Co.* v. *United States*, 47 Cust. Ct. 96, 100, C.D. 2286 (1961), *aff'd.*, 50 CCPA 62, C.A.D. 821 (1963). But as the phrase now stands, the court believes that it is merely descriptive of a process to which screenings may or may not have been subjected, Congress having been made aware of the fact that these new articles of trade were the product of various stages of *separation*, among other things. [Summary of Tariff Information, 1921, p. 706] And it must be emphasized that contrary to defendant's assertion, *grinding* does not indentify *forms* of screenings [defendant's brief, page 6] but rather identifies *advancement in condition* of the screen-

ings. See *U.S. Vitamin Corporation* v. *United States*, 33 Cust. Ct. 269, 275, C.D. 1664 (1954), *aff'd.*, 43 CCPA 44, C.A.D. 607 (1956).

Since it is conceded that pelletizing creates a *form* of screenings, it follows that the subject merchandise is within the well-settled rule that an *eo nomine* provision covers all *forms* of an article. *Nootka Packing Co. et al.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935). This being so, it is clear that the imported grain screenings pellets come within the purview of the *eo nomine* provision for screenings in item 184.47. And, as between item 184.47 and item 184.75 which is a residual use provision, item 184.47 more specifically describes the imported merchandise. *United States* v. *Lansen Naeve Corp.*, 44 CCPA 31, C.A.D. 632 (1957).

The court, therefore, agrees with plaintiff, and finds that plaintiff's claim for classification of the screenings under item 184.47 is well founded and must be sustained. Judgment will be entered herein accordingly.

ERRATUM

In CUSTOMS BULLETIN, Vol. 15, No. 45, dated November 11, 1981, page 55 Slip-Op. 81–91, should read Slip-Op. 81–92.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, *November 16, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/393	Rao, J. November 10, 1981	Kayten Trading Corp.	R65/7014, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Table cutlery and stainless steel flatware
R81/394	Rao, J. November 10, 1981	Mitsui & Co. Ltd.	R62/11217, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads
R81/395	Rao, J. November 10, 1981	Mitsui & Co. Ltd.	R63/903, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Sewing machine heads
R81/396	Rao, J. November 10, 1981	National Silver Co. et al.	R61/5201, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Table cutlery, chrome flatware, stainless steel flatware, etc.

R81/397	Rao, J. November 10, 1981	National Silver Co.	R65/7001, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Stainless steel flatware
R81/398	Rao, J. November 10, 1981	National Silver Co. et al.	R65/8351, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Stainless steel flatware
R81/399	Rao, J. November 10, 1981	National Silver Co.	R66/6349, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Table cutlery and stainless steel flatware
R81/400	Rao, J. November 10, 1981	National Silver Co.	R66/19576, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Table cutlery and stainless steel flatware
R81/401	Rao, J. November 10, 1981	National Silver Co. et al.	R68/14440, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Stainless steel flatware
R81/402	Rao, J. November 12, 1981	National Silver Co.	R69/2937, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Stainless steel flatware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/403	Rao, J. November 12, 1981	Nichimen Co., Inc.	R62/10007, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads
R81/404	Rao, J. November 12, 1981	Nichimen Co., Inc.	R63/53 8, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values.	Agreed statement of facts	Portland, Oreg. Sewing machine heads
R81/405	Rao, J. November 12, 1981	Nichimen Co., Inc.	R64/2808	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Honolulu Sewing machine heads
R81/406	Rao, J. November 12, 1981	Nichimen Co.	R64/2847	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Orleans Sewing machine heads

Decision on Petition for Rehearing Before the U.S. Court of Customs and Patent Appeals

November 5, 1981

APPEAL 81-3.—UNITED STATES v. ARNOLD PICKLE & OLIVE CO.—CUCUMBERS IN BRINE—PACKING COSTS—EXPORT VALUE.—C.D. 4868 Reversed September 17, 1981 (C.A.D. 1270). Petition for Rehearing Filed by Appellee on October 7, 1981, Denied.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, NOVEMBER 25, 1981.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

(19 CFR 207.40)

Notice of Request for Public Comment on Termination of Countervailing Duty Investigation Concerning Refrigerators, Freezers, Other Refrigerating Equipment and Parts From Italy

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, telephone 202-523-0296.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On March 28, 1980, the Commission received a request from the Delegation of the Commission of the European Communities for the review of the countervailing duty order on refrigerators, freezers, other refrigerating equipment

and parts from Italy (T.D. 75–85), notice of which was published on March 28, 1973, in the Federal Register (38 FR 8057).

The Commission received a letter on October 26, 1981, from White Consolidated Industries, Inc., the original petitioner for the countervailing duty order, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty order.

The legislative history of section 704(a) of the Tariff Act of 1930, as amended by the Trade Agreements Act, indicates that the Commission should solicit public comment prior to termination of an investigation and approve the termination only if it is in the public interest. In light of the Commission's duty to consider the public interest, the Commission requests written comments from persons concerning the proposed termination of the investigation on refrigerators, freezers, other refrigerating equipment and parts from Italy. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register.

By order of the Commission.

Issued: November 17, 1981.

KENNETH R. MASON,
Secretary.

731–TA–38 (Final)

Truck Trailer Axle-and-Brake Assemblies and Parts Thereof From Hungary

CANCELLATION OF HEARING

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing.

SUMMARY: On November 12, 1981, the United States Department of Commerce notified the Commission that pursuant to the provisions of section 734 of the Tariff Act of 1930 (19 U.S.C. 1673c), that Commerce and the Hungarian Railway Carriage and Machine Works by their counsel, accepted a proposed agreement on the basis of which Commerce proposes to suspend its investigation concerning less-than-fair-value sales of truck trailer axle-and-brake assemblies, and parts thereof, provided for in items 692.32 and 692.60 of the Tariff Schedules of the United States (TSUS).

Accordingly, the Commission hereby gives notice of the cancellation of its hearing, originally scheduled for December 9, 1981, in connection with investigation No. 731–TA–38 (Final) to determine whether an

industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission, Room 337, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523-0289.

SUPPLEMENTARY INFORMATION: Until further notice, the Commission, in connection with investigation No. 731-TA-38 (Final), hereby cancels: the date for making the staff report available to the public, originally scheduled for November 19, 1981; the date for filing requests to appear at the hearing, originally scheduled for December 1, 1981; the prehearing conference, originally scheduled for December 2, 1981; the date for filing prehearing briefs, originally scheduled for December 4, 1981; the hearing, originally scheduled for December 9, 1981; and the date for submission of written statements, originally scheduled for December 16, 1981.

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20).

By order of the Commission.

Issued: November 16, 1981.

KENNETH R. MASON,
Secretary.

Drycleaning Machinery From West Germany

REQUEST FOR COMMENTS CONCERNING INSTITUTION OF SECTION 751(b) REVIEW INVESTIGATION

AGENCY: International Trade Commission.

ACTION: Request for comments regarding institution of section 751(b) review investigation concerning affirmative determination in Investigation No. AA1921-99, Drycleaning Machinery from West Germany.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist which warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), to review the Commission's affirmative determination in investigation No. AA1921-99 regarding drycleaning machinery from West Germany. The purpose of the proposed section 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, would be

threatened with material injury, or the establishment of an industry would be materially retarded, by reason of imports of drycleaning machinery from West Germany if the antidumping order is modified or revoked with respect to such merchandise provided for in item 670.41 of the Tariff Schedules of the United States.

SUPPLEMENTARY INFORMATION: On September 29, 1972, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act 1921, by reason of imports of drycleaning machinery from West Germany determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (LTFV).

On November 8, 1972, the Department of the Treasury issued a finding of dumping (T.D. 72–311) and published notice of the dumping finding in the Federal Register (37 FR 23715).

On October 28, 1981, the Commission received a request to review its affirmative determination in investigation No. AA1921–99. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Barnes, Richardson, & Colburn on behalf of Boewe Machinenfabrik, GmbH, a West German exporter of drycleaning machinery, and American Permac Inc., a related U.S. importer of such merchandise.

WRITTEN COMMENTS REQUESTED: Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (46 FR 18023), the Commission requests comments on whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: (1) domestic consumption of drycleaning machines has been increasing steadily during the past five years, (2) sales of machines with larger capacity, new technology, and more environmentally safe features used almost exclusively by professional drycleaners have increased, while sales of smaller coin-operated machines have declined markedly, and (3) imports of drycleaning machines from West Germany have declined from 15 percent of U.S. consumption in 1977 to 10 percent in 1981.

THE REQUEST FOR REVIEW OF THE INJURY DETERMINATION: Copies of the request for review of the injury determination and any other public documents in this matter are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

ADDITIONAL INFORMATION: Under §201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the signed original and 19 true copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C.

20436. All comments must be filed no later than December 28, 1981. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission (202–523–0289).

By order of the Commission.

Issued: November 19, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN LARGE VIDEO MATRIX DISPLAY SYSTEMS AND COMPONENTS THEREOF } Investigation No. 337–TA–75

Notice of Denial of Motion To Reopen Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Denial of motion to reopen investigation.

SUMMARY: The Commission has voted unanimously to deny respondent's motion to reopen the record of the investigation to receive newly discovered evidence.

SUPPLEMENTARY INFORMATION: On June 19, 1981, the Commission ordered that large video matrix display systems and components thereof, including spare parts, that infringe claims of U.S. Letters Patent Nos. 3,594,762, 3,941,926, or 4,009,335 and are manufactured by SSIH Equipment S.A., of Bienne, Switzerland, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, be excluded from entry into the United States for the remaining terms of said patents, except under license. 46 FR 32694 (June 24, 1981). On July 16 and 17, 1981, the United States District Court for the Eastern District of Michigan held invalid U.S. Letters Patent Nos. 3,941,926

and 4,009,335 in the course of a patent infringement suit. On August 10, 1981, the Commission, on its own motion, modified its exclusion order to suspend that portion of the order relating to the '926 and '335 patents, pending resolution of the validity of those patents on appeal. 46 FR 42217 (Aug. 19, 1981). The modified order became final on August 19, 1981. Respondent SSIH Equipment S.A. has asked the Commission to reopen the investigation to consider newly discovered evidence. Motion No. 75–33 (July 29, 1981). The Commission voted unanimously to deny the motion on November 12, 1981.

Copies of the Commission's Action and Order, Opinion, and all other nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Michael B. Jennison, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

By order of the Commission.

Issued: November 19, 1981.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–83 and 84 (Preliminary)

HOT-ROLLED CARBON STEEL PLATE FROM BELGIUM AND BRAZIL

AGENCY: United States International Trade Commission.

ACTION: Institution of two preliminary countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–83 (Preliminary) and 701–TA–84 (Preliminary) to determine, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Brazil of hot-rolled carbon steel plate, provided for in item 607.6615 of the Tariff Schedules of the United States Annotated (1981), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: November 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Featherstone, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0242.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted following receipt of advice from the U.S. Department of Commerce on November 18, 1981, that it was initiating countervailing duty investigations on hot-rolled carbon steel plate from Belgium ann Brazil pursuant to section 702(a) of the Tariff Act of 1930 (19 U.S.C. § 1671a(a)). The Commission must make its determination in these investigations within 45 days after the date of notification from Commerce, or by January 4, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 FR 76457), and particularly subpart B thereof.

Written submissions.—Any person may submit to the Commission on or before December 16, 1981, a written statement of information pertinent to the subject matter of the investigations. Assigned original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with the investigations for 9:30 a.m., e.s.t., on December 14, 1981, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. Lynn Featherstone, telephone 202-523-0242, not later than December 7, 1981, to arrange for their appearance. The conference in these investigations will be held concurrently with that for investigations Nos. 731–TA–51 (Preliminary), hot-rolled carbon steel plate from Romania, and 701–TA–85 (Preliminary), hot-rolled carbon steel sheet from France. Parties in support of the imposition of antidumping or countervailing duties in these cases will be collectively allocated two hours within which to make an oral presentation at the conference. Parties in opposition to the imposition of such duties will also be collectively allocated two hours,

with one-half hour each for representatives of Romania, Belgium, Brazil, and France.

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR §207), and part 201, subparts A through E (19 CFR §201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: November 19, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN STEEL ROD TREATING APPARATUS AND COMPONENTS THEREOF } Investigation No. 337–TA–97

Notice of Sanctions and of Disposition of Certain Procedural Matters

AGENCY: U.S. International Trade Commission.

ACTION: Notice of imposition of sanctions and of disposition of certain procedural matters.

SUPPLEMENTARY INFORMATION: Pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, the Commission is currently conducting an investigation of alleged unfair acts and unfair methods of competition in connection with the importation or sale of certain steel rod treating apparatus and components thereof.

Notice of the institution of this investigation was published in the Federal Register of January 28, 1981 (46 FR 9263).

The Commission conducted a hearing on violation and on remedy, bonding and the public interest on October 14, 1981.

Prior to oral argument on violation, the Commission disposed of certain procedural matters then pending before the Commission. The matters pending were the following:

(1) Motion No. 97–57c—Complainant's motion to declassify documents for the purpose of effective oral presentation. Filed October 2, 1981. Response filed October 7, 1981.

(2) Respondents' submission concerning the allegedly inconsistent testimony of one of complainant's witnesses in court proceedings in New York. Filed October 7, 1981. The alleged inconsistent statement was submitted for inclusion in the evidentiary record.

(3) Motion No. 97–59—Respondents' motion for sanctions against complainant for withholding documents. Filed October 7, 1981. Response filed October 9, 1981.

(4) Motion No. 97–60—Complainant's motion to allow Mr. Paul Morgan to appear as a witness in the public-interest phase of the hearing. Filed October 8, 1981.

The matters were disposed of as follows:

(1) Motion No. 97–57c was denied. The Commission indicated that it was prepared to conduct a portion of the hearing *in camera* in order to hear argument regarding the documents in question.

(2) Respondents' submission of the allegedly prior inconsistent statement of one of complainant's witnesses was denied as untimely filed and was not received into evidence.

(3) The Commission requested oral argument from counsel regarding Motion No. 97–59, with a written ruling to follow after the hearing.

(4) Motion No. 97–60 to allow Mr. Paul Morgan to appear as a witness in the public-interest phase of the hearing was granted.

Following the hearing, both complainant Morgan and respondents Ashlow Ltd., Ashlow Corp., Korf Industries, Inc., and Georgetown Steel Corp. filed submissions regarding Motion No. 97–59.

The Commission has granted Motion No. 97–59 and has imposed certain limited evidentiary sanctions against complainant by entering certain adverse findings of fact and by admitting certain documents into evidence.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 523–0375.

By order of the Commission.

Issued: November 19, 1981.

KENNETH R. MASON.
Secretary.

Investigation No. 701–TA–85 (Preliminary)

HOT-ROLLED CARBON STEEL SHEET FROM FRANCE

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 701–TA–85 (Pre-

liminary) to determine, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of hot-rolled carbon steel sheet upon which bounties or grants are alleged to be paid. For purposes of this investigation, hot-rolled carbon steel sheets is defined as hot-rolled sheets and plates, of other than alloy iron or steel, whether or not corrugated or crimped and whether or not pickled; not cold rolled; not cut, not pressed, and not stamped to nonrectanglular shape; not coated or plated with metal and not clad; over 12 inches in width and in coils or if not in coils under 0.1875 inch in thickness; as provided for in items 607.6610, 607.6700, 607.8320, or 607.8342 of the Tariff Schedules of the United States Annotated (1981).

EFFECTIVE DATE: November 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Featherstone, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0242.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted following receipt of advice from the U.S. Department of Commerce on November 18, 1981, that it was initiating a countervailing duty investigation on hot-rolled carbon steel sheet from France pursuant to section 702(a) of the Tariff Act of 1930 (19 U.S.C. § 1671a(a)). The Commission must make its determination in this investigation within 45 days after the date of notification from Commerce, or by January 4, 1982 (19 CFR § 207.17). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 FR 76457), and particularly subpart B thereof.

Written submissions.—Any person may submit to the Commission on or before December 16, 1981, a written statement of information pertinent to the subject matter of the investigation. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submission must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has

scheduled a conference in connection with this investigation for 9:30 a.m., e.s.t., or December 14, 1981, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. Lynn Featherstone, telephone 202–523–0242, not later than December 7, 1981, to arrange for their appearance. The conference in this investigation will be held concurrently with that for investigations Nos. 731–TA–51 (Preliminary), hot-rolled carbon steel plate from Romania, and 701–TA–83 and 84 (Preliminary), hot-rolled carbon steel plate from Belgium and Brazil. Parties in support of the imposition of antidumping or countervailing duties in these cases will be collectively allocated two hours within which to make an oral presentation at the conference. Parties in opposition to the imposition of such duties will also be collectively allocated two hours, with one-half hour each for representatives of Romania, Belgium, Brazil, and France.

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: November 19, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 731–TA–51 (Preliminary)

HOT-ROLLED CARBON STEEL PLATE FROM ROMANIA

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the instruction of investigation No. 731–TA–51 (Preliminary) to determine, pursuant to section 733(a) of the Tariff Act of 1990 (19 U.S.C. § 1673b(a), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry

in the United States is materially retarded, by reason of imports from Romania of hot-rolled carbon steel plate, provided for in item 607.6615 of the Tariff Schedules of the United States Annotated (1981), which are possibly sold in the United States at less than fair value.

EFFECTIVE DATE: November 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Featherstone, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0242.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted following receipt of advice from the U.S. Department of Commerce on November 18, 1981, that it was initiating an antidumping investigation on hot-rolled carbon steel plate from Romania pursuant to section 732(a) of the Tariff Act of 1930 (19 U.S.C. §1673a(a)). After monitoring imports of certain steel products under the Trigger Price Mechanism, Commerce found significant sales of hot-rolled carbon steel plate from Romania being made at less than the relevant trigger price. These sales constitute possible sales at less than fair value. The Commission must make its determination in the investigation within 45 days after the date of notification from Commerce, or by January 4, 1982 (19 CFR § 207.17). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 FR 76457, and particularly subpart B thereof.

Written submissions.—Any person may submit to the Commission on or before December 16, 1981, a written statement of information pertinent to the subject matter of this investigation. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform jwith the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., e.s.t., on December 14, 1981, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. Lynn Featherstone, telephone 202–523–0242, not later than December 7, 1981, to arrange for their appearance. The conference in this investigation will be

held concurrently with that for investigations Nos. 701–TA–83 and 84 (Preliminary), hot-rolled carbon steel plate from Belgium and Brazil, and 701–TA–85 (Preliminary), hot-rolled carbon steel sheet from France. Parties in support of the imposition of antidumping or countervailing duties in these cases will be collectively allocated two hours within which to make an oral presentation at the conference. Parties in opposition to the imposition of such duties will also be collectively allocated two hours, with one-half hour each for representatives of Romania, Belgium, Brazil, and France.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issue: November 19, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN WHEEL LOCKS AND COMPONENTS THEREOF } Investigation No. 337–TA–102

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation based on settlement agreement.

SUMMARY: Having reviewed the record in this investigation, including the presiding officer's recommendation, the Commission has voted to grant the parties' joint motion to terminate (motion 102–4) and is ordering the termination of investigation No. 337–TA–102, Certain Wheel Locks and Components Thereof. The motion was joined by all parties to the investigation.

PETITIONS FOR RECONSIDERATION: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission order. Such petitions must be in accord with section 210.57 of the Commission's rules (46 FR 17528 (March 18, 1981), to be codified at 19 CFR § 210.57).

SUPPLEMENTARY INFORMATION: On May 28, 1981, the Commission published notice of the institution of an investigation, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), of alleged unfair methods of competition and unfair acts in the importation and sale of certain wheel locks and components thereof (46 F.R. 28770). On August 7, 1981, complainant McGard, Inc., respondents Kyo-Ei Industrial Corp., Mackin Industries, Superior Industries International, Inc., and Custom Plating Corp., and the Commission investigative attorney jointly moved to terminate the investigation on the basis of a settlement agreement entered into by complainant, respondents and one nonparty, Kyo-Ei America Corp. The presiding officer recommended that the Commission grant the motion.

The Commission published notice of the proposed settlement agreement on September 16, 1981 (46 FR 46023), and requested comments from the public. No comments adverse to termination were received.

Copies of the Commission's Action and Order and any other public documents on the record of this investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161. The complete text of the settlement agreement, except for confidential business information contained therein, is also available for public examination.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–1626.

By order of the Commission.

Issued: November 18, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 701–TA–82 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

Notice of Institution of Preliminary Countervailing Duty Investigation and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation to determine whether there is a reasonable indication that an in-

dustry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Canada of hard-smoked herring filets, classified under item 111.80 of the Tariff Schedules of the United States.

EFFECTIVE DATE: November 17, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator (202–523–0439).

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted following receipt of a revised petition on November 2, 1981, from the McCurdy Fish Co., Lubec, Maine. Originally filed on September 30, 1981, McCurdy's petition was found by Commerce to have insufficient data in support of its subsidy allegations, and on October 22, 1981, the company withdrew its complaint to acquire additional information. Accordingly the U.S. International Trade Commission terminated its investigation (No. 701–TA–81 (Preliminary)) pending the petitioner's resubmission. Notice of the termination of investigation No. 701–TA–81 (Preliminary) and the cancellation of the public conference therefor was published in the Federal Register of October 29, 1981 (46 FR 53544).

Authority. Section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority (Commerce). Such a determination must be made within 45 days after the date on which a petition is filed under section 702(b). Accordingly, the Commission, on November 17, 1981, instituted preliminary countervailing duty investigation No. 701–TA–82. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76457) and particularly, subpart B thereof.

Written submissions. Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before December 4, 1981. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submission must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure

(19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.s.t., on November 30, 1981, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. parties wishing to participate in the conference should contact Mr. John MacHatton (202–523–0439) by 5:00 p.m., e.s.t., November 25, 1981. It is anticipated that parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by Mr. MacHatton.

Inspection of the petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: November 17, 1981.

KENNETH R. MASON,
Secretary.

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